

Grauzer, Thomas

From: Sharon Hope Weintraub <apache@austintexas.gov>
Sent: Tuesday, August 14, 2018 4:21 PM
To: Clerk, City
Cc: sharon@weintraub.name
Subject: Appeal of Rule R161:18.08

**DCC RECEIVED AT
AUG 15 '18 PM 4:08**

This message is from Sharon Hope Weintraub. [sharon@weintraub.name]

I wish to appeal the adoption of the above rule regarding the final adoption of 14.4.0 (Rules for Cemeteries Owned and Operated by the City of Austin, adopted by the Director of the Parks and Recreation Board effective August 2, 2018
(http://www.austintexas.gov/sites/default/files/files/Parks/Cemeteries/Cemetery_Rules_final_Aug_2__2018.pdf), for the following reasons:

The incorrect version of the rules was adopted and posted. On August 13, 2018, I and other stakeholders met with Ms. Kimberly McNeeley, Acting Director, Austin Parks and Recreation Department (PARD), and Mr. Anthony Segura, Assistant Director, PARD, and they informed us that the wrong version of the rules had been approved and filed. Ms. McNeeley told us that she and Mr. Segura had forwarded revisions to the Legal Department but due to a communication error these revisions were not incorporated in what was intended to be the final version of the rules.

PARD lacks any authority to impose new rules on existing grave site memorials and gardens to the extent such new rules and regulations would force the entire or substantial removal of existing memorials or gardens. It is well established under law that when a city enacts an ordinance, law, rule, or regulation that significantly affects the enjoyment or use of an existing property, that existing use must either be grandfathered for as long as the initial use continues or the city must fairly compensate the the property holder for the loss of the value or use of the property. The rules fail to grandfather existing grave site memorials or gardens for as long as the initial use continues.

PARD has utterly refused for over four years to comply with the October 17, 2013, Austin City Council resolution requiring the City Manager, in collaboration with stakeholders and a working group of the Parks and Recreation Board, to evaluate whether current cemetery policies related to grave ornamentation were appropriately sensitive to personal and cultural expressions of grieving, while preserving necessary safety for cemetery workers and respect for the values of all families. The review was supposed to be completed within six months. Instead, PARD has repeatedly engaged in bureaucratic delays and equivocations and refused to meet face-to-face with stakeholders and negotiate in good faith.

PARD has failed to properly notify the public and stakeholders throughout the rules and regulation revision process and the process was not open or transparent. Because PARD, as a government agency, has failed to give sufficient public notice, any finalization of cemetery rules and regulations are completely illegitimate, invalid, and of questionable legality. PARD's own website often was completely silent regarding meetings or the comment period for the rules. Often only those who had been involved in the process from the beginning and were on PARD's e-mail list received actual notice of meetings or deadlines, and in the past PARD has provided incorrect e-mail links or dates. No attempt was made to notify the public through other venues, such as signage or notices at the cemeteries, social media such as Facebook or Nextdoor, or local media, such as newspapers or radio announcements. Many people in Austin do not have computer or Internet access and they were effectively disenfranchised.

The proposed rules violate federal law by prohibiting ethnic or religious groups from engaging in certain religious practices or traditions. For example, it is a Jewish tradition to leave a small stone when visiting a grave site, as a symbol of the permanence of love and memory. The stones are traditionally placed on the headstone or at its foot and they are never meant to be removed. In the Jewish section of the Austin Memorial Park stones have been left by mourners and visitors for decades; there is even a receptacle holding stones for visitors to use. However, under a strict interpretation of the proposed rules, not only would the placement of the stones be prohibited, all other stones would be subject to removal by the Cemetery Administrator. This would be a blatant violation of Jewish tradition and a desecration of Jewish resting places. Title II of the United States Civil Rights Act of 1964 prohibits discrimination on the grounds of race, color, religion, or national origin in any place of public accommodation. The cemeteries are public parks and imposing any new regulation prohibiting Jewish citizens placing stones on graves when there has been no such limitation before and authorizing public employees to remove stones from Jewish graves clearly discriminates against the Jewish citizens of Austin.

In 1992, the City of Austin has implemented a Perpetual Care Trust Fund in accordance with Texas law. This fund should be incorporated in and made part of the cemetery rules and regulations as it directly involves the maintenance of individual grave sites and the city cemeteries. Further, PARD has failed to comply with both state law and Austin ordinances regarding the trust, has made illegal expenditures from this trust, and is illegally barring potential trustees from donating to the trust. Any rules and regulations must be placed on hold until PARD complies with both state law and Austin ordinances, accounts for all funds, proceeds, and expenditures regarding the trust, and fully implements such a trust.

The rules grant the Cemetery Administration extensive powers without any checks or balances. Under the rules, the Cemetery Administrator is authorized to remove any object in a cemetery that is not specifically permitted under these rules or that the Cemetery Administrator determines to present a current or foreseeable threat to the public's health or safety. This gives the Cemetery Administration complete and unchecked power to remove objects from grave sites based solely upon his or her discretion and without any notice or review. Further, there is nothing in the rules requiring that the removal be done in a careful and caring manner or providing for the repair or remediation of any damage or injury to a grave site resulting from removal of the object.

Nothing in the rules requires PARD to publicize the rules. This entire issue began because PARD and its agents utterly failed to publicize or enforce the initial cemetery rules and regulations first enacted by the Austin City Council in 1978. It was not until October of 2013 that PARD suddenly sought to retroactively apply the rules. During the intervening 26 years PARD had given both implicit and explicit permission to families to decorate graves sites with gardens and other memorials that did not comply with the rules. PARD's demands that long-established gardens and memorial be removed, even though such removal would cause significant damage to grave sites, as well as emotional distress to families and friends of the deceased, resulted in stakeholders appealing to the city council and the city council enacting the October 17, 2013, resolution. Because of PARD's past history of neglect regarding implementation of rules and regulations, the rules must expressly require PARD to ensure that the rules, and any proposed or adopted revisions or changes, are published and readily available to the public, including, but not limited to, prominently posting these rules on its website and making copies of the rules available at all cemeteries under its management. Further, a written copy of the rules must be provided to persons who inquire about purchasing or who purchase a lot or space within any cemetery managed by PARD.

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I wish to appeal the adoption of the above rule regarding the final adoption of 14.4.0 (Rules for Cemeteries Owned and Operated by the City of Austin), adopted by the Director of the Parks and Recreation Board effective August 2, 2018 (http://www.austintexas.gov/sites/default/files/files/Parks/Cemeteries/Cemetery_Rules_final_Aug_2_2018.pdf), for the following reasons:

The incorrect version of the rules was adopted and posted. On August 13, 2018, I and other stakeholders met with Ms. Kimberly McNeeley, Acting Director, Austin Parks and Recreation Department (PARC), and Mr. Anthony Segura, Assistant Director, PARC, and they informed us that the wrong version of the rules had been approved and filed. Ms. McNeeley told us that she and Mr. Segura had forwarded revisions to the Legal Department but due to a communication error these revisions were not incorporated in what was intended to be the final version of the rules.

PARC lacks any authority to impose new rules on existing grave site memorials and gardens to the extent such new rules and regulations would force the entire or substantial removal of existing memorials or gardens. It is well established under law that when a city enacts an ordinance, law, rule, or regulation that significantly affects the enjoyment or use of an existing property, that existing use must either be grandfathered for as long as the initial use continues or the city must fairly compensate the property holder for the loss of the value or use of the property. The rules fail to grandfather existing grave site memorials or gardens for as long as the initial use continues.

PARC has utterly refused for over four years to comply with the October 17, 2013, Austin City Council resolution requiring the City Manager, in collaboration with stakeholders and a working group of the Parks and Recreation Board, to evaluate whether current cemetery policies related to grave ornamentation were appropriately sensitive to personal and cultural expressions of grieving, while preserving necessary safety for cemetery workers and respect for the values of all families. The review was supposed to be completed within six months. Instead, PARC has repeatedly engaged in bureaucratic delays and equivocations and refused to meet face-to-face with stakeholders and negotiate in good faith.

PARC has failed to properly notify the public and stakeholders throughout the rules and regulation revision process and the process was not open or transparent. Because PARC, as a government agency, has failed to give sufficient public notice, any finalization of cemetery rules and regulations is completely illegitimate, invalid, and of questionable legality. PARC's own website often was completely silent regarding meetings or the comment period for the rules. Often only those who had been involved in the process from the beginning and were on PARC's e-mail list received actual notice of meetings or deadlines, and in the past PARC has provided incorrect e-mail links or dates. No attempt was made to widely notify the public through other venues, such as signage or notices at the cemeteries, social media such as Facebook or Nextdoor, or local media, such as newspapers or radio announcements. Many people in Austin do not have computer or Internet access and they were effectively disenfranchised from the process.

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